

March 13, 2017

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq., Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: **EX PARTE PRESENTATION**  
*Structure and Practices of the Video Relay Service Program;*  
*Telecommunications Relay Services and Speech-to-Speech Services for*  
*Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123

Dear Ms. Dortch:

On March 9, 2017, Dixie Ziegler, Vice President of Hamilton Relay, Inc. (“Hamilton”), and the undersigned counsel for Hamilton spoke via teleconference with Karen Peltz Strauss and Robert Aldrich of the Consumer & Governmental Affairs Bureau, and Eliot Greenwald of the Disabilities Rights Office, regarding the draft *Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking and Order* (“*Report and Order*”) tentatively scheduled for consideration at the Commission’s open meeting on March 23, 2017.

Hamilton expressed its appreciation for the Commission’s new approach of publishing draft items before their scheduled vote, as a way of increasing transparency and bringing to the Commission’s attention any unintentional errors in the record.

In particular, Hamilton agreed with the draft *Report and Order*’s proposed adoption of new Section 64.604(c)(5)(iii)(L)(6). That provision would direct the TRS Fund Administrator not to withhold TRS Fund payments for a Video Relay Service (“VRS”) provider’s failure to meet the speed-of-answer standard, if the provider has a pending waiver request asserting exigent circumstances.<sup>1</sup>

However, Hamilton noted that the proposed addition of new subsection (6) is specific to VRS providers, whereas the remainder of Section 64.604(c)(5)(iii)(L) refers either to “TRS providers” or simply “providers.” Hamilton believes that the rationale for extending such relief

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<sup>1</sup> Draft *Report and Order*, at 59.

to VRS providers applies equally to other providers of Telecommunications Relay Services. Accordingly, Hamilton requested that, in a future proceeding, the Commission seek comment on expanding new subsection (6) to all TRS providers, as shown in the attachment hereto.

Hamilton's recent experience is emblematic of the need for extending such relief to all TRS providers, and not just VRS providers. On January 2, 2017, Hamilton's relay call center in Georgia was destroyed during a severe storm. Although Hamilton promptly submitted a speed-of-answer waiver request, asserting exigent circumstances,<sup>2</sup> to date the waiver request has not been acted upon. Unnecessary delays in processing TRS Fund payments could be avoided by simply extending new Section 64.604(c)(5)(iii)(L)(6) to all TRS providers.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1). In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ David A. O'Connor

Counsel for Hamilton Relay, Inc.

Enclosure

cc (via e-mail): Participants

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<sup>2</sup> See Hamilton Petition for Waiver, CG Docket No. 03-123 (filed Jan. 19, 2017).

47 C.F.R. § 64.604(c)(5)(iii)(L) – all current references are either to “TRS provider” or “provider”

*(L) Procedures for the suspension/withholding of payment.*

(1) The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.

(2) If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, a **TRS provider** will be notified within two months from the date for the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. **TRS providers** then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If a **TRS provider** does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.

(3) If, the **TRS provider** submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the **TRS provider** for the minutes of use in dispute, within eight months after submission of such additional justification.<sup>1</sup>

(4) If the **provider** meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the **provider** for such minutes of use. Any payment by the Commission will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.

(5) If the Commission determines that the **provider** has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the **provider** of this decision within one year of the initial request for payment.

\* \* \* [Proposed new provision on Page 59 of draft item, showing Hamilton’s proposed changes in red]

(6) If the ~~VRS~~ **TRS** provider submits a waiver request asserting exigent circumstances affecting one or more call centers that will make it highly improbable that the ~~VRS~~ **TRS** provider will meet the speed-of-answer standard for call attempts occurring in a period of time identified by beginning and ending dates, the Fund administrator shall not withhold TRS Fund payments for a ~~VRS~~ **TRS** provider’s failure to meet the speed-of-answer standard during the identified period of time while the waiver request is under review by the Commission. In the event that the waiver request is denied, the speed-of-answer requirement is not met, and payment has been made to the provider from the TRS Fund for the identified period of time or a portion thereof, the provider shall return such payment to the TRS Fund for any period of time when the speed-of-answer requirement was not met.

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<sup>1</sup> A correction published in the *Federal Register* on March 27, 2012 changed “VRS provider” to “TRS provider” in this subsection. 77 Fed. Reg. 18,106 (Mar. 27, 2012).